

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

* * * * *
State of New Hampshire, Department
of Revenue Administration
v.
State Employees' Association
* * * * *

DECISION ON REHEARING
CONCERNING BARGAINING UNIT EMPLOYEES

Appearances: SEA - Richard Molan, Deputy Executive Director; and
Department of Revenue Administration -

BACKGROUND

The Supreme Court of New Hampshire in State of New Hampshire v. Public Employee Labor Relations Board and State Employees' Association of New Hampshire, Inc., #7739, decided December 2, 1977, remanded to the Board the issues of composition of the bargaining unit in the Department of Revenue Administration since the Court found that the agency had not developed a record for its decision and that the Board did not indicate which standard it was using to determine the inclusion or exclusion of employees from the bargaining unit.

A hearing was held on the remand at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire on December 28, 1977 with both parties in attendance. Upon request by the Chairman, neither party indicated its desire to present additional evidence in the matter, each relying on the facts presented at

earlier hearings.

After a review of the facts presented at earlier hearings and the consideration of the positions of the parties, including the briefs of the parties in the Supreme Court action and facts found before the Board, the Board at the hearing issued orally its decision herein set forth that its earlier determination of included employees be affirmed. Immediately following that decision and at the request of both parties at the hearing, the nine challenged ballots, being those cast by nine of the eleven challenged voters, were counted, resulting in six votes in favor of the State Employees' Association as the exclusive bargaining representative and three votes in favor of no representative. When added to the nonchallenged ballots, which had resulted in thirty-two votes for the State Employees' Association and thirty votes for no representative, the total vote was thirty-eight votes for the State Employees' Association, thirty-three votes for no representative and one spoiled ballot, or a total of seventy-two ballots cast.

FINDINGS OF FACT AND RULINGS OF LAW

In its initial decision, the Board included in the bargaining unit eleven employees which the Department of Revenue Administration had sought to exclude, six as supervisory personnel and five as confidential employees, as defined in R.S.A. 273-A:8 II and R.S.A. 273:1 IX(c) respectively. These posited supervisory employees, included an Accountant III employed in

the returns processing division of the Department; and five real estate appraiser supervisors employed in the property appraisal division. The five employees for which the Department sought exclusion as "confidential" employees, and which the Board included in the proposed unit are a Clerk Stenographer III, Secretary to the Director of the Collection Division; three Clerk Stenographers IV; Secretary to the Directors of the Municipal Services, Property Appraisal and Returns Processing Division; and Auditor II who serves as Secretary to the Director and Assistant Director of the Audit Division.

The Board has considered standards required for supervisor and confidential employees in the context of labor relations and under the intent of R.S.A. 273-A as the Supreme Court has directed in relation to this case. The Board has also undertaken to establish guidelines in general for its use in the future concerning supervisor and confidential employees. While this process of defining the terms under the statute is incomplete, the Board finds no need to delay its decision since the instant case can be determined with the basic standards already determined.

1. Supervisory Employees.

The Board finds that the employees sought to be declared supervisory under the statute in this matter and refused by the Board are not supervisors within the meaning of the statute. R.S.A. 273-A:3 was passed as a labor relations statute. It contemplates in its definitions that the labor relationship

will be kept in mind when defining terms. The five real estate appraiser supervisors, according to the evidence, work in the field and supervise other individuals doing appraisal work as well as doing appraisal work themselves. These other personnel are not employees within the bargaining unit of the Revenue Administration Department, but are in some cases outsiders and in some cases temporary employees. In a sense, these "supervisors" do perform a function supervising others but not in the sense contemplated by the statute, that of a fellow member of the bargaining unit in a labor relations context. Therefore, these employees are not supervisors within the terms of the statute. The Board finds in this case that a supervisor must be one who not only directs the work of another, but also has some say over the hiring, firing or advancement of others, in a real rather than a tangential or peripheral way. Clearly the real estate appraiser supervisors employed in the property appraisal division of the Division of Revenue Administration do not meet this test. While there may be other aspects of the job of a supervisor yet to be defined by the Board, this basic test has not been met in this case and these employees are to be included. Likewise, the Accountant III employed in the Returns Processing Division of the Department, while in a sense supervising the work of others, is not in a control position such that the position should be excluded from the bargaining unit.

2. Confidential employees, in the terms of a labor

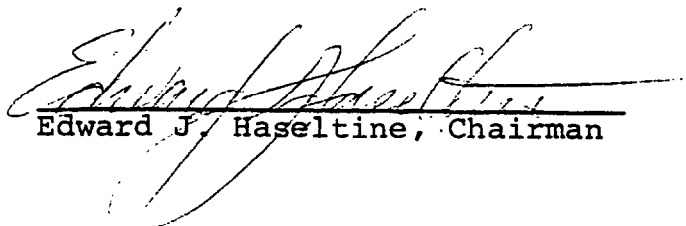
relations statute, are not those who merely deal with sensitive material or confidential matters, such as tax returns, "state secrets", financial or personal matters which might be deemed "confidential" in the sense that they should not be divulged to the general public. Indeed, most state employees (teachers, policemen, and others) have access to and are familiar with "confidential" information and the drafters of the statute could not have intended that they be excluded from bargaining units. Rather, the Board finds that the meaning of the statute at a minimum is that confidential employees are those who have access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like. The Board further finds that the number of such employees in any department or other unit of government must be large enough to enable the labor relations activities of the Department and the personnel activities of the Department to be carried on, but must not be so numerous as to deny employees who are entitled to the rights and benefits of R.S.A. 273-A those rights merely on the assertion that they might somehow be connected with activities related to labor relations. In this particular case, two employees of the Revenue Administration Department were excluded from the bargaining unit upon the finding that they were necessary assistants and/or stenographers to the administrators having labor relations authority and as such they had access to such information and were necessary in performing that labor relations function. The others requested

to be excluded, while having access to confidential information or working for other excluded supervisors, were not found to have been "confidential" in the same sense as is contemplated by the statute and therefore were included. The Board finds no facts upon reviewing the situation which would change its position on these employees and feels that an adequate number of employees have been excluded as confidential to enable the labor relations function of the Department to proceed. As in the definition of supervisory employee, the Board may develop further guidelines in relation to what constitutes a confidential employee in the future, but finds when tested against the minimum standard stated herein, the decision in regard to the Revenue Administration Department must stand.

ORDER

1. The prior decision of the Public Employee Labor Relations Board as to bargaining unit is affirmed.

2. The vote on the election is found to have resulted in thirty-eight votes for the selection of the State Employees' Association of New Hampshire, Inc., thirty-three votes for no representative and one spoiled ballot for a total of seventy-two votes. The State Employees' Association of New Hampshire is therefore declared the winner of the election and shall be certified as the exclusive bargaining representative according to the rules of the Board.


Edward J. Haseltine, Chairman

Other members voting: Richard Cummings, Joseph Moriarty and
James Anderson, all concurred

Bradford E. Cook, Board Counsel; and Evelyn LeBrun, Clerk,
also present.